

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
NORTHERN DIVISION

MCF AF, LLC AND
MCS CAPITAL, LLC

PLAINTIFFS

V.

CIVIL ACTION NO. 3:16-CV-722-DPJ-FKB

EDUARDO A. FLECHAS, ET AL.

DEFENDANTS

MOTION TO COMPEL PRODUCTION OF DOCUMENTS

The Mississippi Bar (“the Bar”) moves this Court to compel Eduardo Flechas to produce certain documents needed in the disciplinary matter styled *The Mississippi Bar v. Eduardo A. Flechas*, Cause No. 2016-B-1155 and in support states:

1. Mr. Flechas represented Davion Norton, Petra Ches and Ken’Driana Gibbes along with others in a mass tort action in Jefferson County, Mississippi styled *Simon, et al. v. Texaco, Inc., et al.*; Cause No. 2007-110 (“the *Simon* matter”). After obtaining a favorable jury verdict for his clients and while the matter was on appeal, Mr. Flechas settled the *Simon* matter.

2. The Plaintiffs in this action each provided litigation funding during the pendency of the *Simon* appeal. Mr. Flechas failed to notify either Plaintiff that the Simon matter had settled and failed to tender any settlement funds to the Plaintiffs. The Plaintiffs each filed suit in this Court and the matters, Cause No. 3:13-CV-00621-DPJ-FKB and Cause No. 3:13-CV-636-CWR-FKB, were consolidated.

3. As part of the consolidated litigation, on October 15, 2013 this Court entered an Order requiring Mr. Flechas to provide an accounting of the total amount of funds received in the *Simon* matter, any disbursements, any remaining funds, the identity and location of accounts holding such funds and enjoining the distribution of any remaining funds with limited exception (the “Asset Freeze Order”)(Cause No. Cause No. 3:13-CV-00621-DPJ-FKB, Docket No. 19).

4. In response to the Order, Mr. Flechas submitted an affidavit on October 16, 2013, indicating that \$400,000.00 of the settlement funds received were not in his lawyer trust account but rather Mr. Flechas had transferred these funds to an account held by Flechas Family Holdings, LLC. (2013 Flechas Aff.). The Court held a status conference on September 9, 2015 ordering Mr. Flechas to submit an affidavit confirming that all funds remained deposited in the same accounts. (Cause No. Cause No. 3:13-CV-00621-DPJ-FKB, September 9, 2015, Text Only Order). On September 23, 2015, Mr. Flechas submitted an affidavit revealing \$390,000.00 in the Flechas Family Holdings, LLC Account had been disbursed. The funds held in the Flechas Family Holdings, LLC Account were disbursed to Flechas Law Firm and then spent. (2015 Flechas Aff.).

5. Upon learning Mr. Flechas violated the terms of the Asset Freeze Order and pursuant to her obligation under Miss. R. Prof. Conduct 8.3, counsel for one of the Plaintiffs reported Mr. Flechas's misconduct to the Bar.

6. At the direction of the Committee on Professional Responsibility, the Bar instituted formal disciplinary proceedings against Eduardo A. Flechas ("Mr. Flechas") on August 11, 2016, alleging the conduct described above violates Rule 1.15(a), (b), (and (c); 3.3; 3.4(c), 5.4(a); and 8.4(a), (b), (c), and (d) of the Mississippi Rules of Professional Conduct. That matter is styled *The Mississippi Bar v. Eduardo A. Flechas*, Cause No. 2016-B-1155 and is presently pending before a Complaint Tribunal appointed by the Supreme Court of Mississippi.

7. In the course of the disciplinary proceeding, the Bar propounded document requests to Mr. Flechas on November 29, 2016, pursuant to Rule 34 of the Mississippi Rules of Civil Procedure. A copy of the Bar's Requests for Production of Documents is attached as Exhibit "A."

8. On December 29, 2016, the Bar agreed to extend the time for Mr. Flechas to respond to written discovery by two weeks.

9. On January 31, 2017, the Mr. Flechas served his written discovery responses on the Bar but these responses were deficient. Mr. Flechas failed to provide all records of any account in which any funds from the *Simon* matter were deposited, disbursed or otherwise transferred. Mr. Flechas has indicated in the proceedings before this Court as well as in the disciplinary matter that funds were transferred to an account for Flechas Family Holdings and then later to an operating account for the Flechas Law Firm. Bank Statements for at least these two accounts should have been produced. Mr. Flechas also failed to produced his own records for any of these accounts that are required by Miss. R. Prof. Conduct 1.15(a), showing the total amount on deposit in the trust account at all times, the amount on deposit in a pooled account that belongs to each client or third party; and, the manner in which each transaction is processed, whether those records be in the form of a checkbook register or other accounting showing the receipt and disbursement of these funds.

10. On March 23, 2017, the Bar notified Mr. Flechas that his responses and document production were deficient and asked that same be supplemented by April 5, 2017. A copy of the Bar's March 23, 2017, letter is attached as Exhibit "B."

11. On April 5, 2017, instead of supplementing his discovery responses and document production, Mr. Flechas asked for an extension of an additional ten (10) days to respond. On April 18, 2017, when the Bar had still not received any response from Mr. Flechas, the Bar notified counsel for Mr. Flechas that if Mr. Flechas did not respond by the end of next day, the Bar would file a motion to compel. The only response the Bar received on April 19, 2017, was Mr. Flechas's Petition for Interlocutory Appeal of the Tribunal's April 6, 2017, Order compelling Mr. Flechas's deposition and Mr. Flechas's third attempt to stay the disciplinary proceedings.

12. After Mr. Flechas's Petition for Interlocutory Appeal and Motion for Rehearing were denied by the Supreme Court of Mississippi on June 15, 2017, and September 20, 2017, respectively, the Tribunal took up the Bar's pending motion to compel the production of documents, setting it for

hearing on November 9, 2017. Mr. Flechas asserted in defense to the motion that the documents requested by the Bar were previously sealed by this Court. The parties entered an agreed order by which Mr. Flechas was to submit the requested financial records to the Presiding Judge of the Complaint Tribunal, Judge Jaqueline Mask, for *in camera* inspection and further instruction. A copy of the November 9, 2017, Agreed Order is attached as Exhibit “C.”

13. After Judge Mask’s inspection of the documents she issued an order on November 28, 2017, directing Mr. Flechas to seek permission from this Court to produce the requested records in the disciplinary proceedings. A copy of the November 28, 2017, Order is attached as Exhibit “D.”

14. To date, Mr. Flechas has made no such application to this Court.

15. On July 20, 2018 the Bar moved this Court to add it as an interested party for the purpose of seeking production of these financial records needed to prosecute its disciplinary case. (Docket No. 64).

16. August 29, 2018, the Court granted the Bar’s Motion to be Added as an Interested Party and entered a text only order.

17. Accordingly the Bar now requests the Court unseal the requested financial records for production in the disciplinary matter and order Mr. Flechas to produce the requested financial records to the Bar so that a new trial date from the Tribunal may be obtained.

18. Specifically the Bar requests the following documents be produced:

- a. All records for all accounts in which any funds from the Simon matter were deposited, disbursed or otherwise transferred;
- b. All records of Mr. Flechas’s lawyer trust account or accounts for the November 2012 through November 2016, including all subsidiary accounts;
- c. All records of Mr. Flechas’s operating account or accounts for the period beginning September 1, 2013 through November 2016; and

- d. All records of Mr. Flechas's personal account or accounts for the period beginning
September 1, 2013, through November 2016;

This the 10th day of October 2018

Respectfully Submitted

THE MISSISSIPPI BAR

/s/Melissa Selman Scott
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CERTIFICATE OF SERVICE

I, Melissa Selman Martin, counsel for The Mississippi Bar, hereby certify that I have this day
filed the foregoing document with the Clerk of Court using the ECF system which sent notification to
of such filing to the following:

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